

In re: EDWARD MARTIN, d/b/a EDWARD MARTIN ORCHARDS, A SOLE PROPRIETORSHIP.

AMAA Docket No. 01-0001.

Filed August 27, 2002.

AMAA – Default – Failure to pay assessments.

Colleen A. Carroll, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This proceeding was instituted under the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. § 601 *et seq.* (The “Act”), and the Marketing Orders for Nectarines Grown in California, 7 C.F.R. Part 916 (the “Nectarine Order”) and for Pears and Peaches Grown in California, 7 C.F.R. Part 917 (the “Peach Order”), by a complaint filed by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, alleging that respondent Edward Martin, doing business as Edward Martin Orchards, a sole proprietorship, willfully violated the Order and the Regulations.

The Hearing Clerk served on the respondent, by mail copies of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). The respondent was informed in the accompanying letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. The respondent has failed to file an answer within the time prescribed in the Rules of Practice. The material facts alleged in the complaint, which are admitted by the respondent’s failure to file an answer, are adopted and set forth herein as Findings of Fact. This decision and order is issued pursuant to section 1.139 of the Rules of Practice.

Findings of Fact

1. Respondent Edward Martin is an individual whose mailing address [as alleged in the complaint] is 10187 Witworth, Gustine, California 95322, and does business as, and is the sole proprietor of, Edward Martin Orchards, located at the same address. At all times mentioned herein, respondent Edward Martin dba Edward Martin Orchards was a handler of California peaches and nectarines as defined in the Act, 7 U.S.C. § 609C(1), and in the Peach and Nectarine Orders, 7 C.F.R. §§ 916.10 and 917.7.

2. Respondent willfully violated section 916.41 of the Nectarine Order, 7 C.F.R. § 916.41, by failing to pay to the California Tree Fruit Agreement \$2,220.70

in assessments owed in the 2000 marketing season.

3. Respondent willfully violated section 917.37 of the Peach Order 7 C.F.R. § 917.37 by failing to pay to the California Tree Fruit Agreement \$2,779.35 in assessments owed in the 2000 marketing season.

4. On or about June 15, 2000, respondent willfully violated section 917.50 (1)(6) of the Peach Order (7 C.F.R. § 917.50(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of May 2000.

5. On or about July 15, 2000, respondent willfully violated section 917.50 (a)(6) of the Peach Order (7 C.F.R. § 917.50(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of June 2000.

6. On or about August 15, 2000, respondent willfully violated section 916.60(a)(6) of the Nectarine Orders (7 C.F.R. § 916.60(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of July 2000.

7. On or about August 15, 2000, respondent willfully violated section 917.50 (a)(6) of the Peach Order (7 C.F.R. § 917.50(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of July 2000.

8. On or about September 15, 2000, respondent willfully violated section (a)(6) of the Nectarine Order (7 C.F.R. § 916.60(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of August 2000.

9. On or about September 15, 2000, respondent willfully violated section 917.50(a)(6) of the Peach Order (7 C.F.R. § 917.50(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of August 2000.

10. On or about October 15, 2000, respondent willfully violated section 916(a)(6) of the Nectarine Order (7 C.F.R. § 916.60(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of September 2000.

11. On or about October 15, 2000, respondent willfully violated section 917.50(a)(6) of the Peach Order (7 C.F.R. § 917.50(a)(6)), by failing to file with the California Tree Fruit Agreement destination reports for the month of September 2000.

12. On or about November 15, 2000, respondent willfully violated section 916.60(b) of Nectarine Order (7 C.F.R. § 916.160(b)), by failing to file with the California Tree Fruit Agreement recapitulation of shipment reports for the 2000 marketing year.

13. On or about November 15, 2000, respondent willfully violated section 917.178(b) of the Peach Order (7 C.F.R. § 917.178(b)), by failing to file with the California Tree Fruit Agreement recapitulation of shipment reports for the 2000 marketing year.

Conclusion

- a. The Secretary of Agriculture has jurisdiction in this matter.
- b. By reason of the facts set forth in the Findings of Fact above, the respondent has violated sections 916.41, 916.60(a)(6), and 916.160(b) of the Nectarine Order (7 C.F.R. §§916.41, 916.60(a)(6), 916.160(b)) and sections 917.37, 917.50, and 917.178(b) of the Peach Order (7 C.F.R. §§ 917.37, 917.50, 917.178(b)).
- c. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondents are assessed a civil penalty of \$15,000, which shall be paid by a certified check or money order made payable to the Treasurer of the United States.

2. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, from paying to the Nectarine Administrative Committee #2,220.70 in past due assessments for crop year 2000, and from paying to the Control Committee #2,779.35 in past due assessments for crop year 2000.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

[This Decision and Order became final August 26, 2002, and effective August 27, 2002.-Editor]
